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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
Portland Division

Susan S. McNeil

Plaintiff,

vs.

Freedom Mortgage Corporation

Defendant.

Case No. 3:19-CV-01183

COMPLAINT

**RESPA Violations, Breach of
Contract, and UTPA Violations
(12 U.S.C. § 2601; ORS 646.605 et.
seq.)**

DEMAND FOR JURY TRIAL

Plaintiff Susan McNeil (hereinafter "McNeil") through her attorney Benjamin D. Knaupp, files this complaint for violations of 12 U.S.C. § 2601 et. seq. known as the Real Estate Settlement Procedures Act (RESPA); breach of contract; and ORS 646.605 et. seq. known as the Unlawful Trade Practices Act (UTPA).

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VENUE AND JURISDICTION

1.

This court has jurisdiction over the parties. Jurisdiction is proper pursuant to 28 U.S.C. §1331 because plaintiff's complaint is for violations of 12 U.S.C. §§2601 et. seq. known as the Real Estate Settlement Procedures Act (RESPA) and its accompanying federal regulations, making this a federal question. This court has supplemental jurisdiction over plaintiff's breach of contract claim and her Oregon unfair trade practices claim against defendant pursuant to 28 U.S.C. §1367 because it arises from the same facts as plaintiff's RESPA claim, and is transactionally identical.

PARTIES

2.

Plaintiff Susan S. McNeil is a joint owner of real property commonly known as 2411 Southslope Way West Linn OR, 97069 located in Clackamas county (hereinafter "the property"). The other owner of the property is plaintiff's mother, Lois Oberdorf (hereinafter "Oberdorf"). Plaintiff's property is their personal residence, and was the plaintiff's personal residence at all times relevant to this action.

3.

Defendant Freedom Mortgage Corporation (hereinafter "Freedom") has its principal office and its principal place of business in either Indianapolis Indiana, or Dallas, Texas, and is the servicer of a residential real estate loan to plaintiff.

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STATEMENT OF FACTS

4.

McNeil and Oberdorf executed a deed of trust on the property with Pacific Mercantile Bank on December 13, 2012 for the amount of \$289,600.00. **Exhibit 1 2012 Deed of Trust.** Sometime in 2015, servicing of the loan was transferred to Freedom Mortgage Corporation, and McNeil sent her regular monthly payments to Freedom Mortgage Corporation without fail. On about November 30, 2016, plaintiff's mother Lois Oberdorf filed Chapter 13 bankruptcy due to problems with credit card consumer debt, and a federal bankruptcy court case #16-34536-rld13 was opened. A bankruptcy plan was confirmed on January 24, 2017. The plan approved by the court, trustees, and creditors did not disturb the mortgage being serviced by Freedom, and the trustee was not to collect any mortgage payments. All post-petition regular payments were to continue to be made directly to Freedom. **Exhibit 2, Bankruptcy Plan Document.**

5.

At all times relevant herein, McNeil continued to make the regular payments on the loan directly to Freedom Mortgage Corporation without interruption or default. At some point soon after the bankruptcy was initiated by Oberdorf, Freedom Mortgage stopped sending regular monthly statements to the plaintiffs. Despite this, McNeil continued to make each monthly payment on time to Freedom.

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6.

On February 24, 2018, McNeil faxed a letter to Freedom requesting that monthly mortgage statements be sent directly to her. **Exhibit 3 February 24, 2018 letter to Freedom.** In March 2018, McNeil received a statement from Freedom that included demands for \$1,375 in unexplained fees and charges. In response McNeil prepared and sent a letter to Freedom noting errors on the statement and requesting a written explanation and correction of the error. **Exhibit 4, March 28, 2018 QWR.** The letter specifically noted that it was a Qualified Written Request under RESPA.

7.

Freedom acknowledged receipt of the March 28, 2018 QWR but did not respond with an explanation of the fees. The June 2018 statement on the Mortgage received by McNeil included a charge of \$1,510.24 as "past unpaid amount" and the July 2018 statement included a charge of \$770.24 as "past unpaid amount" even though plaintiff had not missed a single payment. **Exhibit 5, Mortgage Statements.** On or about July 23, 2018 McNeil sent to Freedom an additional QWR. **Exhibit 6, July 2018 QWR.** Again Freedom acknowledged receipt of the QWR but did not otherwise provide a satisfactory explanation or correction of the problem.

8.

After receiving another statement from Freedom that included charges of \$770.24, McNeil sent Freedom a qualified written request on about September 22,

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2018, requesting an explanation from Freedom for the grounds for the charges of \$770.24, and in which McNeil included a check to Freedom for the \$770.24. **Exhibit 7, September 22, 2018 QWR and Check.** McNeil's letter explained why she believed that there was no justification for the charges Freedom was demanding payment for, and that she was paying the \$770.24 under protest, and demanding a refund of said amount. In response to McNeil's letter, Freedom responded with two letters, one dated October 17, 2018 and another dated November 6, 2018. **Exhibit 8, October 17 and November 6, 2018 Letters from Freedom.**

9.

The November 6, 2018 letter from Freedom stated that "the fees assessed to your account are for attorney fees regarding your bankruptcy". In December of 2018 McNeil received an additional letter from Freedom noting additional \$650.00 in unexplained "amount past due" on the account. **Exhibit 9, December 27, 2018 Letter from Freedom.** At no point during Freedom's servicing of the mortgage has McNeil missed any regular payment on the mortgage to Freedom. At the time Freedom's letter was sent, and as of the date this action was filed, plaintiff Oberdorf has fully complied with the bankruptcy plan payment requirements and other terms.

10.

In April and May 2018, McNeil also made numerous telephone calls to Freedom seeking an explanation for the errors and charges on her mortgage statement. McNeil

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was informed by Freedom's employees that she was being charged attorney fees, and that they had authority to bill her account for attorney fees at any time.

11.

On about May 14, 2019, McNeil applied for consumer credit for a vehicle purchase, and the vehicle merchant checked McNeil's credit report, and told her that her credit report showed that Freedom had been reporting her loan payments as late or delinquent, which lowered her credit score. On June 14, 2019, McNeil obtained a credit report from Equifax which showed that her mortgage account with defendant was closed, and had a status of "not more than two payments past due", and reported that the date of last payment was 9/1/2017, and the "date of first delinquency" was 12/1/2016. **Exhibit 10, Equifax Credit Report Excerpts.** Defendant's false credit reporting entries have damaged plaintiff's credit.

FIRST CLAIM FOR RELIEF

CLAIM FOR RESPA VIOLATIONS

12.

Plaintiff incorporates by reference and re-alleges paragraphs 1 - 10 above into this section.

13.

Pursuant to 12 U.S.C. 2605(e)(2)(A), defendant was required to investigate and take corrective action within 30 days of when it received plaintiff's qualified written

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request (Exhibits 6 and 7) dated September 22, 2018. As alleged above, because plaintiff never missed any payments on the mortgage, and because of the exclusion of the mortgage from the bankruptcy plan, there was no justification for a charges of \$770.24 on McNeil's account. McNeil's written demand to Freedom explained the error, and demanded a refund of the \$770.24 she paid under protest.

14.

Freedom has no justifiable legal basis for charging McNeil for attorney fees or other charges because there has never been a default on the mortgage either by plaintiff or by Oberdorf. Plaintiff has therefore been damaged in the amount of \$770.24 which plaintiff paid under protest to Freedom, and has requested a refund. Freedom's failure to refund the \$770.24 that McNeil paid to Freedom without a legal justification is a violation of 12 U.S.C. 2605(k)(1)(c). Freedom had clear and detailed notice of the error from McNeil prior to this action being filed, yet still failed to act to correct its error, and has claimed it will be entitled to additional attorney fees from McNeil.

15.

As a result of Freedom's RESPA violations, Freedom is liable to McNeil under 12 U.S.C. 2605(f) for her actual damages of \$770.24 and up to \$2,000 in additional damages if the court finds that Freedom's conduct exhibits a pattern or practice of noncompliance under 12 U.S.C. 2605(f). McNeil has suffered the loss of at least

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\$770.24. McNeil has also suffered, or will suffer damages for damage to her credit in an amount yet to be determined.

SECOND CLAIM FOR RELIEF

UNFAIR TRADE PRACTICES

16.

Plaintiff incorporates by reference and re-alleges paragraphs 1 - 15 into this section. The loan at issue is secured by plaintiff's primary residence and was entered into for personal, family, or household purposes.

17.

Although McNeil submitted multiple requests for correction of the above noted errors, Freedom to date has refused to correct its error and refund unlawful charges which McNeil paid to Freedom. Freedom has filed inaccurate credit reporting data and closed McNeil's credit report without justification, which has caused further harm to McNeil by damaging her credit score.

18.

Freedoms actions as described above constitute a violation of OAR 137-020-850(2)¹ which is a violation of O.R.S. 646.608(1)(u) of Oregon's Unlawful Trade Practices Act, which provides that plaintiff is entitled to her ascertainable loss of

¹ OAR 137-020-850 provides: "A mortgage loan servicer engages in unfair or deceptive conduct in trade or commerce if the mortgage loan servicer: . . . (2) Assesses or collects any default-related fee or charge that the servicer is not legally authorized to assess or collect under the terms of the residential mortgage loan, deed of trust, or mortgage;"

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money, and potentially punitive damages.

THIRD CLAIM FOR RELIEF

BREACH OF CONTRACT

19.

Plaintiff incorporates by reference and re-alleges paragraphs 1 -18 into this section. Freedom is responsible to service plaintiff's mortgage according to the terms of the deed of trust attached hereto as Exhibit 1, which is a contract between the parties hereto. Defendant breached the contract between the parties when defendant began charging attorney fees related to a bankruptcy that were not authorized by the contract. Neither McNeil nor Oberdorf defaulted on any payments on the mortgage, and there is no basis in the deed of trust for Freedom to charge attorney fees to McNeil unless there was a default by McNeil or Oberdorf.

20.

McNeil is entitled to damages for Freedom's breach of the contract, in the amount of the unauthorized charges that plaintiff has paid defendant, in an amount of at least \$770.24 to date. McNeil is entitled to specific performance of the contract by Freedom which includes properly accounting for payments made by plaintiffs, and corrections of any mistakes discovered to have been made by defendant, and any other measures necessary to reinstate the loan in good standing, and repair plaintiff's credit report damage.

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FOURTH CLAIM FOR RELIEF

ATTORNEYS FEES

21.

Pursuant to 12 U.S.C. § 2605(f) if plaintiff prevails on her claims for RESPA violations, she is entitled to her costs and reasonable attorney fees incurred. If plaintiff prevails on her claims for unfair trade practices, she is entitled to reasonable attorney fees and costs under ORS § 646.638.

22.

Pursuant to ORS 20.096(1), if Plaintiff prevails on her breach of contract claim, Plaintiff is entitled to an award of her reasonable attorney fees because Section 14 of the trust deed provides for attorney fees and costs to be awarded to the beneficiary in any dispute arising out of the enforcement of the loan.

WHEREFORE, plaintiff prays for:

1. A trial by jury on any legal claims for which plaintiff is entitled to a jury trial;
2. An award of actual damages of \$770.24 suffered by plaintiff;
3. An award of statutory damages of \$2,000 for RESPA violations;
4. An order that plaintiff's mortgage account be returned to good standing and that all payments made be credited to the account and all incorrectly accrued fees reversed; and
5. Damages and an accounting of plaintiff's contract obligations to defendant for

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loan payments due in 2019, less payments tendered to defendant.

Dated: July 30, 2019

s/ Benjamin D. Knaupp
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